

Hearing Date: March 31, 2010
10:30 a.m.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

EVIDENT TECHNOLOGIES, INC.,

Debtor.

Case No. 09-12515

Chapter 11

**LIMITED OBJECTION OF DEBTOR-IN-POSSESSION LENDERS
TO SETTLEMENT WITH LIFE TECHNOLOGIES CORPORATION
f/k/a INVITROGEN CORPORATION**

TO: Hon. Robert E. Littlefield, Jr., Chief United States Bankruptcy Judge

Debtor-in-Possession Lenders ("DIP Lenders"), by and through their attorneys McNamee, Lochner, Titus & Williams, P.C., Francis J. Smith, Esq., of counsel, as and for their Limited Objection to Debtor's Order to Show Cause for Authority to Enter into Settlement with Life Technologies Corporation f/k/a Invitrogen Corporation respectfully state as follows:

1. The DIP Lenders believe the Settlement Agreement annexed to the Order to Show Cause does not sufficiently protect the interests of the Debtor and impairs the Debtor's ability to carry out its Plan of Reorganization and emerge from bankruptcy.


2. The DIP Lenders desire to delete the second paragraph of Section 3.2 of the Settlement Agreement and amend and restate such paragraph in its entirety as follows (the strike-through language indicates text to be deleted from the original paragraph and the underlined language indicates the changes requested by the DIP Lenders to the original paragraph):

"Notwithstanding the above, so long as Defendant is not in breach of the terms contemplated herein, with respect to that certain license agreement between Defendant and eBioscience, Inc., effective January 31, 2008. Plaintiffs ~~will~~ covenant not to sue Defendant on any claim based solely upon Defendant's past performance of any and all required obligations prior to the date of this Settlement agreement, Defendant's performance of any and all required obligations necessary to preserve eBioscience's rights as required by Section 365(n) of the U.S. Bankruptcy Code, and/or Defendant's receipt of royalties in the past, present or future under said ~~that certain license agreement between Defendant and eBioscience, Inc., effective January 31, 2008.~~ Receipt of royalties, and the past performance of any obligations by Defendant and/or Defendant's performance of any and all required obligations necessary to preserve eBioscience's rights as required by Section 365(n) of the U.S. Bankruptcy Code under such license agreement shall not constitute the commercialization proscribed in Section 2.3."

WHEREFORE, DIP Lenders respectfully request that the Settlement Agreement by and between Debtor and Life Technologies Corporation f/k/a Invitrogen Corporation be amended and restated in the manner set forth above, and for such other and further relief the Court may deem just and proper.

Dated: Albany, New York
March 30, 2010

Respectfully submitted,
McNAMEE, LOCHNER, TITUS & WILLIAMS, P.C.
Attorneys for DIP Lenders

By: 
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